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Nos. 14-556, 14-562, 14-571, 14-574

In The
Supreme Court of the United States

JAMES OBERGEFELL, et al.,
Petitioners,
v.
RICHARD HODGES, et al.,
Respondents.

VALERIA TANCO, et al.,
Petitioners,
v.
WILLIAM EDWARD "BILL" HASLAM, et al.,
Respondents.

APRIL DEBOER, et al.,
Petitioners,
v.
RICHARD SNYDER, et al.,
Respondents.

GREGORY BOURKE, et al.,
Petitioners,
v.
STEVE BESHEAR, et al.,
Respondents.

On Writs Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF OF MAJOR RELIGIOUS ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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QUESTIONS PRESENTED

1. Does the Fourteenth Amendment require a State to license a marriage between two people of the same sex?

2. Does the Fourteenth Amendment require a State to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out of state?

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INTEREST OF *AMICI CURIAE*

Religious organizations and associations representing over 50 million Americans appear on this brief as a diverse coalition of faith communities.[1] *Amici* are the National Association of Evangelicals; The Church of Jesus Christ of Latter-day Saints; The Ethics & Religious Liberty Commission of the Southern Baptist Convention; The Lutheran Church – Missouri Synod; the Assemblies of God; the Christian Legal Society; The Brethren Church; The Christian and Missionary Alliance; the Church of God, Cleveland, Tennessee; Converge Worldwide; the Evangelical Congregational Church; the Evangelical Presbyterian Church; The Fellowship of Evangelical Churches; the Free Methodist Church – USA; Grace Communion International; the International Pentecostal Holiness Church; The Missionary Church; Open Bible Churches; and The Wesleyan Church.

Notwithstanding our theological differences, we are united in declaring that the traditional institution of marriage is indispensable to the welfare of the American family and society. We are also united in our belief that a decision requiring the States to license or recognize same-sex marriage would generate

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[1] The parties have consented to the filing of this brief and letters indicating their consent are on file with the Clerk. No counsel for any party authored this brief in whole or in part, and no person or entity other than *amici* and their counsel made any monetary contribution intended to fund the preparation or submission of this brief.

church-state conflicts that will imperil vital religious liberties. This brief is submitted out of our firm judgment that the Constitution does not require States to take that fateful step. Individual statements of interest are in the appendix.

SUMMARY OF ARGUMENT

Recognizing a new right to same-sex marriage would harm religious liberty. That harm is avoidable because neither the Constitution nor this Court's precedents dictates a single definition of marriage for the Nation. Preserving religious liberty is a compelling reason not to give the Fourteenth Amendment a novel reading that would require every State to license and recognize marriage between persons of the same sex. At a minimum, the Court should carefully consider how a ruling mandating same-sex marriage would adversely affect religious liberty.

Our religious beliefs, reason, and practical experience with families lead us to support the man-woman definition of marriage. Contrary to malicious caricatures, we do so not out of animus or ignorance but out of concern, conviction, and love. These beliefs are rooted in our theologies and in centuries of one-to-one counseling and personal experience with intact and broken families, functionally fatherless children, and single mothers. These beliefs and experiences are also imbedded in our way of life and in the very identities of our people and faith communities. They form the basis of our families. They shape our judgments

about what constitutes a just society and how that society is best ordered for the freedom and good of all. And, because they are based on our understanding of truths that do not change, we cannot abandon them as vestiges of what some suppose to be a benighted past.

A decision that traditional marriage laws are grounded in animus would demean us and our beliefs. It would stigmatize us as fools or bigots, akin to racists. In time it would impede full participation in democratic life, as our beliefs concerning marriage, family, and sexuality are placed beyond the constitutional pale. It would nullify our votes on key public policy issues – including on the laws before the Court in this case. Because we cannot renounce our scriptural beliefs, a finding of animus would consign us to second-class status as citizens whose religious convictions about vital aspects of society are deemed illegitimate. Assaults on our religious institutions and our rights of free exercise, speech, and association would intensify.

Likewise dangerous to religious liberty would be a ruling that sexual orientation is a suspect class entitled to heightened scrutiny. Judicial suspicion would quickly follow, aiming not only at laws but also at the beliefs and practices of religious organizations and believers themselves. If this Court declares sexual orientation a suspect class, it will soon be argued that the government has a compelling interest in protecting against private religious conduct that burdens

homosexual conduct. Because scriptural beliefs regarding marriage, family, and sexuality are central to our institutions and our way of life, suspect class status will generate countless new conflicts between church and state.

A constitutional right to same-sex marriage under *any* theory would create severe tensions with religious freedoms and related interests across a wide array of religious, educational, social, and cultural fronts. Directly or not, such a High Court ruling would unavoidably convey "hostility toward religion . . . inconsistent with our history and our precedents." *Cnty. of Allegheny* v. *ACLU*, 492 U.S. 573, 655 (1987) (Kennedy, J., concurring in the judgment in part and dissenting in part). The Constitution marks a wiser course by leaving the people free to decide the great marriage debate through their State democratic institutions. Allowing all citizens an equal voice in shaping their common destiny is the only way the diverse views of a free people can be respected on this matter of profound political, social, and religious importance. That is the only way this issue can be resolved without inflicting grave harm on millions of religious believers and their cherished beliefs and institutions.

ARGUMENT

I. TRADITIONAL MARRIAGE IS CENTRAL TO THE FAITH, PERSONAL IDENTITY, AND WAY OF LIFE OF MILLIONS OF RELIGIOUS AMERICANS.

1. We, along with many Americans, "recognize marriage as having spiritual significance," *Turner* v. *Safley*, 482 U.S. 78, 96 (1987), indeed as being "sacred." *Griswold* v. *Connecticut*, 381 U.S. 479, 486 (1965). Our commitment to traditional, husband-wife marriage reflects a "belie[f] in a divine creator and a divine law," *Burwell* v. *Hobby Lobby Stores, Inc.*, 573 U.S. ___, 134 S. Ct. 2751, 2785 (2014) (Kennedy, J., concurring), and "must be understood by precepts far beyond the authority of government to alter or define." *Town of Greece* v. *Galloway*, 572 U.S. ___, 134 S. Ct. 1811, 1827 (2014) (plurality op.) (Kennedy, J.).

Our religious doctrines hold that marriage between a man and a woman is sanctioned by God as the proper setting for spousal relations and for conceiving and rearing children. We believe that children, families, society, and our Nation thrive best when traditional marriage is sustained and strengthened as a primary social institution. Millions of Americans order their lives around husband-wife marriage and derive meaning and stability from that institution. We make no apologies for these beliefs.

2. The value we place on husband-wife marriage is also influenced by rational judgments about the needs of men, women, children, and society, and

by our collective experience counseling and serving millions of people over countless years. We know from experience the tragedies associated with unwed parenting and marriage breakdown. We have seen boys, bereft of their fathers or any positive male role model, acting out in violence, joining gangs, and engaging in destructive behavior. We have ministered to those boys in prison where too many are consigned to live out their ruined lives. We have cared for and wept with victims left in their destructive wake. We have seen girls, deprived of the love and affection of a father, fall into insecurity and then promiscuity that results in pregnancy and out-of-wedlock birth – thereby repeating the cruel cycle.

It takes a woman *and* a man to create a child. Children need their mothers *and* their fathers. And society needs mothers *and* fathers to take up the duty, and the high privilege, to rear their children. These truths reflect our experience and credible social science research. *See generally* Brief for Scholars of Marriage as *Amici Curiae* Supporting Respondents, *Obergefell* v. *Hodges*, Nos. 14-556, 14-562, 14-571, 14-574 (marshalling extensive research showing how traditional marriage benefits society). That is why society needs the institution of traditional marriage and why Michigan and the other respondent States are within their authority to protect and support it.

3. As our faith communities work to sustain and transmit the virtues of husband-wife marriage and family life, our teachings seldom focus on sexual orientation or homosexuality. Our support for the

historic meaning of marriage arises from a positive vision of "the family, as consisting in and springing from the union for life of one man and one woman in the holy estate of matrimony," *Murphy* v. *Ramsey*, 114 U.S. 15, 45 (1885), and not from animosity toward gays and lesbians.

Hostility does not lie at the root of religious support for husband-wife marriage. Jesus expressed no disapproval or hostility when he taught, "Have you not read that he which made them at the beginning made *them* male and female, [a]nd said, For this cause shall a man leave father and mother, and shall cleave to his wife: and they twain shall be one flesh?" *Matthew* 19:4-5 (KJV). Nor are the Jewish scriptures that Jesus referenced based on animosity toward anyone. *See Genesis* 1:27, 2:23 (KJV).

Faith communities like *amici* have long histories of upholding traditional marriage for reasons that have nothing to do with homosexuality. Their support predates by centuries the very notion of homosexuals as a discrete group, much less same-sex marriage. Many of this Nation's prominent faith traditions, including those represented by these *amici*, have rich narratives that extol traditional marriage without mention of homosexuality.

For five centuries the denominational voices of Protestantism have taught marriage from a biblical view focused on uniting a man and woman in divinely sanctioned union for companionship, for the procreation and rearing of children, and for the benefit of

society. The natures of male and of female are best elevated when the gift of sexuality is kept within a lifetime, monogamous bond. One representative Bible commentary teaches: "Marriage . was established by God at creation, when God created the first human beings as 'male and female' (Gen. 1:27) and then said to them, 'Be fruitful and multiply and fill the earth' (Gen. 1:28). . Marriage begins with a commitment before God and other people to be husband and wife for life," with "[s]ome kind of public commitment" during the ceremony so that society can hold them to their vows and "know to treat a couple as married and not as single."[2] Homosexuality is not central to Evangelical Protestant teachings on marriage.

Catholicism likewise has a long and rich tradition that echoes many of these themes regarding marriage and family. *See* Brief for U.S. Conference of Catholic Bishops as *Amicus Curiae* Supporting Respondents. Homosexuality is a peripheral issue in Catholic marriage teachings.

Marriage is also fundamental to the doctrine of The Church of Jesus Christ of Latter-day Saints. A formal doctrinal proclamation on marriage declares that "[m]arriage between a man and a woman is ordained of God," that "[c]hildren are entitled to birth within the bonds of matrimony, and to be reared by a father and a mother who honor marital vows with complete fidelity," and that "[h]usband and wife

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[2] ENGLISH STANDARD VERSION, STUDY BIBLE 2543-44 (2008).

have a solemn responsibility to love and care for each other and for their children."[3] Strong families based on husband-wife marriage "serve as the fundamental institution for transmitting to future generations the moral strengths, traditions, and values that sustain civilization."[4] Here again, homosexuality is remote from core teachings about marriage and family.

To be sure, religious teachings address various types of sexual conduct outside the traditional marriage norm. But such issues are a secondary part of our positive religious discourse on marriage. The contention that religious support for husband-wife marriage is founded on animus against gays and lesbians is false.

4. Diverse religious views no doubt exist on many topics, but the breadth of consensus over the meaning and purposes of marriage among major faith groups is remarkable. *See, e.g.*, Evangelicals and Catholics Together, *The Two Shall Become One Flesh: Reclaiming Marriage*, FIRST THINGS (March 2015). Last November, for instance, the Vatican hosted a worldwide interfaith colloquium entitled *Humanum*. It attracted

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[3] THE FIRST PRESIDENCY AND COUNCIL OF THE TWELVE APOSTLES OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, THE FAMILY: A PROCLAMATION TO THE WORLD (Sept. 23, 1995), *available at* http://www.lds.org/topics/family-proclamation.

[4] The Church of Jesus Christ of Latter-day Saints, *The Divine Institution of Marriage*, NEWSROOM (Aug. 13, 2008), http://newsroom.lds.org/ldsnewsroom/eng/commentary/the-divine-institution-of-marriage.

major religious leaders from many faiths – Catholic and Protestant, Jewish and Latter-day Saint, Muslim and Hindu and Sikh. Among them were representatives of *amici's* faith traditions, who reiterated their commitment to traditional marriage and extolled its virtues.[5]

In a widely acclaimed address from the Jewish perspective that spoke for many faith groups, Lord Jonathan Sacks, until recently the Chief Rabbi of the United Kingdom, stated:

> What made the traditional family remarkable, a work of high religious art, is what it brought together: sexual drive, physical desire, friendship, companionship, emotional kinship and love, the begetting of children and their protection and care, their early education and induction into an identity and a history. Seldom has any institution woven together so many different drives and desires, roles and responsibilities. It made

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[5] Dr. Richard D. Warren, Senior Pastor of Saddleback Church, Remarks, Biblical Meaning of Marriage (Nov. 18, 2014); Rev. Dr. Russell D. Moore, President of the Ethics & Religious Liberty Commission of the Southern Baptist Convention, Man, Woman, and the Mystery of Christ: An Evangelical Protestant Perspective (Nov. 18, 2014); President Henry B. Eyring, First Counselor in the First Presidency of The Church of Jesus Christ of Latter-day Saints, To Become as One (Nov. 18, 2014).

> sense of the world and gave it a human face, the face of love.[6]

While urging "compassion for those who choose to live differently,"[7] Rabbi Sacks denied that such compassion should "inhibit [people of faith] from being advocates for the single most humanizing institution in history."[8] A family consisting of a man, a woman, and their children is "not only one lifestyle choice among many," he insisted. "It is the best means we have yet discovered for nurturing future generations and enabling children to grow in a matrix of stability and love."[9]

This ennobling conception of marriage reflects not only a broad interfaith consensus, but "a long and thick overlapping consensus" in the West. John Witte, Jr., *The Goods and Goals of Marriage*, 76 NOTRE DAME L. REV. 1019, 1069 (2001). That consensus holds that traditional marriage "is good, does good, and has goods both for the couple and for the children." *Id.* This understanding is a pillar of Western civilization. Religious communities like ours value and defend that ideal still – and we are bound to continue doing so.

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[6] *See* Lord Rabbi Jonathan Sacks, *Humanum* Colloquium on Complementarity, Nov. 17, 2014 (transcript available at http://cvcomment.org/2014/11/18/in-full-the-lord-sacks-speech-that-brought-the-vatican-conference-to-its-feet/).

[7] *Id.*

[8] *Id.*

[9] *Id.*

Our religious beliefs about marriage are defining elements of our personal identities. Marriage for us creates a sacred relationship with our spouse and a sacred duty to God. How we understand marriage defines who we are, not just what we do. *Cf. Burwell*, 134 S. Ct. at 2785 (Kennedy, J., concurring) ("[F]ree exercise is essential in preserving their own dignity and in striving for a self-definition shaped by their religious precepts."). It governs our highest aspirations, our way of life, our family and community interactions. For us, marriage is among our "deepest believings," the central institution around which we "orient[ ] our lives." Steven D. Smith, *Believing Persons, Personal Believings: The Neglected Center of the First Amendment*, 2002 U. ILL. L. REV. 1233, 1320.

II. VOIDING MARRIAGE LAWS FOR REASONS OF ANIMUS WOULD HARM RELIGIOUS LIBERTY AND DISTORT CONSTITUTIONAL LAW.

A. Attributing State Marriage Laws to Animus Would Stigmatize and Demean Religious Organizations and Believers.

Petitioners contend that State marriage laws offend the Equal Protection Clause because they reflect animus. *See* Br. Pets., *Obergefell* v. *Hodges*, No. 14-556, at 23-24; Br. Pets., *Bourke* v. *Beshear*, No. 14-574 (Br. Bourke Pets.), at 30-31. Of course, they soft-pedal the accusation: "Animosity – that is, outright hostility or bigotry – is not a prerequisite to enhanced judicial scrutiny." *Id.* at 30. Petitioners' *amici* are not as

temperate. They contend that the laws at issue here "had the specific – and improper – purpose of codifying a particular religious understanding of marriage into civil law and expressing moral disapproval of same-sex couples." Brief for Anti-Defamation League et al. as *Amici Curiae* Supporting Petitioners at 1. Or, others assert, laws codifying traditional marriage reflect "ancient religious bigotry against gay persons." Brief for Am. Humanist Assoc. and Ctr. for Inquiry as *Amicus Curiae* Supporting Petitioners at 33. Misusing animus doctrine in this way to void State marriage laws will gravely harm religious organizations and Americans of faith.

We emphatically reject the accusation that we and millions of our fellow believers seek to protect traditional marriage out of "ancient religious bigotry against gay persons." *Id.* That slander aims to intimidate and suppress public conversation on a complex issue by equating disagreement with hatred. Laws reserving marriage for the union of a man and a woman were the universal rule in this country until a decade ago. They are not tokens of ignorance and bigotry now.

Our faiths teach love and respect, not hatred, and we are neither ignorant nor bigoted. Laws protecting marriage between a man and a woman are rooted in the good that marriage *is* and the good it *does* – not in antipathy, spite, or ignorance. Our commitment to traditional marriage reflects both experience with the sober realities of family life and a "belie[f] in a divine creator and a divine law." *Burwell*, 134 S. Ct. at 2785

(Kennedy, J., concurring). For us, traditional marriage remains a cherished social *and* religious institution vital to the welfare of children, families, and society.

For this Court to declare laws affirming traditional marriage to be the products of prejudice, ignorance, or bigotry would have dire consequences for religious believers and faith communities. It would "demean[ ]" those who hold such beliefs, with "the resulting injury and indignity" of having their personal convictions condemned by the Nation's highest court and the laws they voted for declared constitutional anathema. *United States* v. *Windsor*, 133 S. Ct. 2675, 2694, 2692 (2013). A finding of animus is "fearsome," *Bishop* v. *Smith*, 760 F.3d 1070, 1103 (10th Cir. 2014) (Holmes, J., concurring), not only because it is practically a death knell for a challenged law, but also because it stigmatizes the opinions and beliefs behind that law. This is especially true when the finding of animus comes from this Court, with its juridical and moral authority. It is a small step from declaring beliefs constitutionally illegitimate to treating those who hold such beliefs as morally and intellectually deficient. Because "the law can be a teacher," *Bd. of Trustees of Univ. of Ala.* v. *Garrett*, 531 U.S. 356, 375 (2001) (Kennedy, J., concurring), a finding of animus or a ruling comparing opposition to same-sex marriage with racism would over time reduce those who believe in traditional marriage to the status of social and political outcasts. *See* SHERIF GIRGIS, ET AL., WHAT IS MARRIAGE? 9 (2012).

B. A Finding of Animus Would Deny the Constitutional Rights of Religious Organizations and Conscientious Objectors.

Relying on animus to nullify State marriage laws would have devastating consequences for religious liberty. Unlike Petitioners' *amici*, we do not understand religious liberty to consist only of the freedom "to decide which marriage ceremonies to perform and which marriages to recognize as sanctified by [our] faith." Brief for Americans United for the Separation of Church and State as *Amicus Curiae* Supporting Respondents (Am. United Br.) at 14. Confining religious freedom so narrowly would remove the "breathing space," *NAACP* v. *Button*, 371 U.S. 415, 433 (1963), guaranteed by the First Amendment. The Constitution "assure[s] the fullest scope of religious liberty." *Sch. Dist. of Abington Twp.* v. *Schempp*, 374 U.S. 203, 212 (1963) (Goldberg, J., concurring). Properly understood, religious liberty would be diminished or denied by overturning State marriage laws for animus.

1. A finding of animus would irreparably damage the free-exercise rights of voters and organizations like ours that supported laws affirming traditional marriage. That right is "essential in preserving [our] own dignity and in striving for a self-definition shaped by [our] religious precepts." *Burwell*, 134 S. Ct. at 2785 (Kennedy, J., concurring) (citation omitted). But it would be hollow if millions of religious persons were made second-class citizens because their basic beliefs and motivations – and thus any laws they support – are deemed tainted by animus.

Mischaracterizing State marriage laws as rooted in animus would act as a "religious gerrymander." *Church of Lukumi Babalu Aye, Inc.* v. *City of Hialeah*, 508 U.S. 520, 532 (1993). Believers and churches do not lose their right to the free exercise of religion by bringing their concerns and convictions into the public square. *See Burwell*, 134 S. Ct. at 2785 (Kennedy, J., concurring) (Free exercise "means, too, the right to express those beliefs and to establish one's religious (or non-religious) self-definition in the political, civic, and economic life of our larger community.").

2. Relying on animus to overturn traditional marriage laws would raise other "serious First Amendment implications." *Schuette* v. *Coal. to Defend Affirmative Action*, 572 U.S. ___, 134 S. Ct. 1623, 1637 (2014) (plurality op.). It would insinuate that "the past 15 years of [national] public debate on this issue have been improper." *Id.* at 1636. A ruling that laws reaffirming traditional marriage are void for animus while laws allowing same-sex marriage are valid extensions of equality would be a form of viewpoint discrimination. *See Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). Private religious speech would be penalized if speech favoring traditional marriage laws were the justification for voiding them. *See Capitol Square Rev. and Advisory Bd.* v. *Pinette*, 515 U.S. 753, 760 (1995). Branding State marriage laws with a scarlet "A" for animus and overturning them on that basis would irreparably diminish the liberty "measured in part by what . . . citizens are free to discuss among themselves,"

especially as they deliberate controversial matters of social policy. *Hill* v. *Colorado*, 530 U.S. 703, 768 (2000) (Kennedy, J., dissenting).

3. Attributing animus to laws approved by millions of voters in dozens of States would also demean the fundamental right to participate in self-government. Last term the Court rebuffed a similar argument when sustaining a Michigan ballot initiative that addressed affirmative action in higher education admissions. "The process of public discourse and political debate should not be foreclosed even if there is a risk that during a public campaign there will be those, *on both sides*, who seek to use racial division and discord to their own political advantage." *Schuette*, 134 S. Ct. at 1637 (emphasis added). The Constitution's answer to factional politics and heated tensions over social issues is frank, robust debates and decision-making through legitimate democratic institutions, not judicial censorship. *Id.* Striking down State marriage laws for animus would be "an unprecedented restriction on the exercise of a fundamental right . to speak and debate and learn and then, as a matter of political will, to act through a lawful electoral process." *Id.*; *accord id.* at 1649 (Breyer, J., concurring in the judgment) ("[T]he Constitution foresees the ballot box, not the courts, as the normal instrument for resolving differences and debates about the merits of [affirmative action] programs."). *Schuette* "applies with equal vigor" here, as the court of appeals held. Pet. App. 43a.

For religious voters, a misdirected application of animus would impose a post-election burden on their right to vote by measuring the validity of laws by the opinions expressed in favor of them. Nullifying State marriage laws because of the religious or moral views of those who proposed or voted for them would disenfranchise citizens from participating in the processes of self-government *as believers*. A Constitution forbidding religious tests for office-holders, *see* U.S. CONST. art. I, § 8, would come to impose a religious test for voters.

4. Religious voters and voices would also be denied democratic participation if *Lawrence* is overread to mean that laws expressing contested moral judgments are *per se* invalid. *Cf.* Brief for Massachusetts et al. as *Amici Curiae* Supporting Petitioners at 19. *Lawrence* held that a criminal law punishing private homosexual conduct between consenting adults was unconstitutional because it was based solely on the majority's moral condemnation. *Lawrence* v. *Texas*, 539 U.S. 558, 571, 578 (2003). But *Lawrence* has no bearing on the validity of *civil* laws enshrining the people's moral, religious, and prudential judgments that retaining the definition of marriage is best for society. Indeed, *Lawrence* twice disclaimed that its reasoning involved "formal recognition" for gay relationships. *Id.* at 567, 578.

Misreading *Lawrence* to preclude legislation based on religious (but not secular) understandings of morality would also deny religious believers equal citizenship by unfairly deeming the laws and policies

they favor presumptively illegitimate. It would suggest that advocacy for same-sex marriage is somehow less moralistic than opposition, when the entire controversy is saturated with moral discourse. *See Dandridge* v. *Williams*, 397 U.S. 471, 487 (1970) (noting that almost all legislation entails conflicting moral claims). Laws responding to the demand for same-sex marriage deserve impartial consideration by the judiciary, regardless of the moral viewpoints they reflect. *Lawrence* does not hold otherwise.

5. Still others argue that religious support for laws reaffirming traditional marriage renders them inconsistent with the Establishment Clause. *See* Brief for President House of Deputies of Episcopal Church et al. as *Amici Curiae* Supporting Petitioners at 34-35. That argument is so flawed that a prominent advocate for same-sex marriage deemed it "outside the space for legitimate disagreement." Roy T. Englert, Jr., *Unsustainable Arguments Won't Advance Case for Marriage Equality*, NAT'L L.J., Apr. 21, 2014, at 35. As numerous briefs by respondents and other *amici* demonstrate, laws reaffirming traditional marriage have secular purposes and effects and do not excessively entangle church and state, *see Lemon* v. *Kurtzman*, 403 U.S. 602 (1971); they do not involve psychological compulsion, *Lee* v. *Weisman*, 505 U.S. 577 (1992); and they are consistent with "historical practices and understandings," *Town of Greece*, 134 S. Ct. at 1819. Such laws do not cross the constitutional line because they "merely happen[ ] to coincide or harmonize with the tenets of some or all religions." *McGowan* v.

Maryland, 366 U.S. 420, 442 (1961); *accord Harris* v. *McRae*, 448 U.S. 297, 319 (1980). No law that meets these tests remotely offends the Establishment Clause. To the contrary, its "clearest command" against interfaith favoritism would be offended by preferring the votes of religious believers that *support* same-sex marriage over religious believers that do not. *Larson* v. *Valente*, 456 U.S. 228, 244 (1982). Like animus, the Establishment Clause attack on the man-woman definition of marriage is a cover for disenfranchising tens of millions of religious voters with traditional beliefs about marriage. And it "reflects an unjustified hostility toward religion . inconsistent with our history and precedents." *Cnty. of Allegheny*, 492 U.S. at 655 (Kennedy, J., concurring in the judgment in part and dissenting in part).

Any hint that religious voices and voters, drawing upon rich religious traditions, cannot legitimately participate in the great democratic debate over marriage is historically preposterous. Religious institutions and believers have contributed to every major political and social movement in this Nation's history – from the founding[10] to the abolition of slavery,[11] the

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[10] "[T]he Founding Fathers believed devotedly that there was a God and that the unalienable rights of man were rooted in Him." *Schempp*, 374 U.S. at 212.

[11] Lincoln's presidential speeches were "suffused with" biblical references that inspired and sustained the fight to end slavery. WILLIAM LEE MILLER, LINCOLN'S VIRTUES 50 (2002).

fight for women's suffrage,[12] and the civil rights movement.[13] *See McDaniel* v. *Paty*, 435 U.S. 618, 641 n.25 (1978) (Brennan, J., concurring in the judgment) ("[C]hurch and religious groups in the United States have long exerted powerful political pressures on state and national legislatures, on subjects as diverse as slavery, war, gambling, drinking, prostitution, marriage, and education."). Striking down State marriage laws because their passage was shaped by private religious influence would be a dramatic rupture with the Court's teaching that the Constitution "may not be used as a sword to justify repression of religion or its adherents from any aspect of public life." *Id.* at 640-41 (citations omitted). Religious believers and churches do not become trespassers when they enter the public square to debate same-sex marriage. Any argument to the contrary – whether couched as animus, non-establishment, or any other theory – misconceives the rightful place of religion in American life.

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[12] Susan B. Anthony argued that women's suffrage would bring moral and religious issues "into the political arena" because such issues held special importance for women. Letter from Susan B. Anthony to Dr. George E. Vincent (Aug. 1904), *in* 3 IDA HUSTED HARPER, LIFE AND WORKS OF SUSAN B. ANTHONY 1294 (1908).

[13] *See* DAVID L. CHAPPELL, A STONE OF HOPE: PROPHETIC RELIGION AND THE DEATH OF JIM CROW 100 (2004) ("The civil rights movement brought religious concerns to bear upon local and national law.").

C. Applying Animus Would Contradict Settled Equal Protection Doctrine.

1. Animus is applicable only in those rare circumstances when a law contains "discriminations of an *unusual character*" intimating that a classification was "motived by an improper animus or purpose." *Windsor*, 133 S. Ct. at 2693 (emphasis added) (quotations and citations omitted). A finding of animus authorizes "careful consideration" rather than rational basis review. It therefore provides an avenue for applying heightened scrutiny without designating the asserted interest a fundamental right or treating all laws affecting a particular class as presumptively suspect. *See Clark* v. *Jeter*, 486 U.S. 456, 461 (1988) (describing the three standards of review under equal protection).

Animus is exceptional because it departs from the rule that a law will not be declared unconstitutional "on the basis of an alleged illicit legislative motive." *United States* v. *O'Brien*, 391 U.S. 367, 383 (1968). Inquiring into animus when adjudicating an equal protection claim serves to "ensure that classifications are not drawn *for the purpose of* disadvantaging the group burdened by the law." *Romer* v. *Evans*, 517 U.S. 620, 633 (1996) (emphasis added). But the Court has rejected "the broad proposition that state decision-making reflecting negative attitudes or fear necessarily runs afoul of the Fourteenth Amendment." *Garrett*, 531 U.S. at 367 (quotations omitted). It has stressed that "[a]lthough such biases may often accompany irrational (and therefore unconstitutional)

discrimination, *their presence alone does not a constitutional violation make*." *Id.* (emphasis added). Only proof of hostility toward the affected group, unmixed with any legitimate purpose for the challenged classification, justifies striking down a law for animus.

The decision below rebuffed the charge of animus. It reasoned that statewide marriage initiatives were motivated by "the fear that the courts would seize control over an issue that people of good faith care deeply about." Pet. App. 42a. Keeping a firm grip on popular sovereignty hardly justifies heightened judicial scrutiny: "If that is animus, the term has no useful meaning." *Id.* And the court denied that State laws reaffirming the traditional definition of marriage warranted a finding of animus "due to the novelty of the law and the targeting of a single group for disfavored treatment under it." *Id.* at 41a. Rather, the ballot measures "codified a long-existing widely held social norm already reflected in state law." *Id.* at 42a. Putting that norm in state constitutions did not make the law "unusual, nor did it otherwise convey the kind of malice or unthinking prejudice the Constitution prohibits." *Id.* Accordingly, the court declined to "indict" voters for "favoring the amendment[s] for prejudicial reasons and prejudicial reasons alone." *Id.* at 44a (punctuation altered).[14]

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[14] Repudiating animus places the decision below in line with other courts and members of this Court. *See, e.g.*, *Smith*, 760 F.3d at 1104-09 (Holmes, J., concurring); *Citizens for Equal Prot.* v. *Bruning*, 455 F.3d 859, 868 (8th Cir. 2006); *Conaway* v.

(Continued on following page)

2. The Sixth Circuit was right to reject animus. Neither *Windsor* nor *Romer* – the leading decisions in the area of sexual orientation – warrants resorting to animus here.

Windsor struck down § 3 of the Defense of Marriage Act ("DOMA") as an "unusual deviation from the usual tradition of recognizing and accepting state definitions of marriage." *Windsor*, 133 S. Ct. at 2693. Only after finding DOMA unusual – it was essentially unprecedented – did the Court delve into "the design, purpose, and effect of DOMA" to determine whether it was "motived by an improper animus or purpose." *Id.* at 2689, 2693. Its illicit purpose, the Court held, was to "impose restrictions and disabilities" on rights granted by those States that adopted same-sex marriage. *Id.* at 2692.

By contrast, State laws defining marriage in conventional terms are anything but "unusual." *Windsor* itself acknowledged that "marriage between a man and a woman no doubt had been thought of by most people as essential to the very definition of that term and to its role and function throughout the history of civilization" and that "[t]he limitation of lawful marriage to heterosexual couples . . . for centuries had been deemed both necessary and fundamental." *Id.* at

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Deane, 932 A.2d 571, 635 (Md. 2007); *Hernandez* v. *Robles*, 855 N.E.2d 1, 8 (N.Y. 2006); *Andersen* v. *King Cnty.*, 138 P.3d 963, 981 (Wash. 2006) (en banc); *see also Lawrence*, 539 U.S. at 585 (O'Connor, J., concurring in the judgment).

2689. Unlike DOMA, State laws regulating marriage are the norm – as the *Windsor* opinion spent pages emphasizing. *See id.* at 2691-92. *Windsor* rejects any reason for inquiring into animus because, as the court below explained, State marriage laws reflect "exactly what every State has been doing for hundreds of years: defining marriage as they see it." Pet. App. 55a.

Windsor did not create an independent right to same-sex marriage. DOMA was held to be a "federal intrusion" on State authority, *Windsor*, 133 S. Ct. at 2692, but *Windsor* nowhere suggested that State traditional marriage laws intrude on federal rights. It would have been unprecedented for the Court to fashion a new right out of its limited inquiry into animus, given the longstanding injunction against "creat[ing] substantive constitutional rights in the name of guaranteeing equal protection of the laws." *San Antonio Indep. Sch. Dist.* v. *Rodriguez*, 411 U.S. 1, 33 (1973).

Romer fits this case even less. There the State measure was "unusual" – indeed "unprecedented." 517 U.S. at 633. Its "sheer breadth" made the law "so discontinuous with the reasons offered for it that the amendment seem[ed] inexplicable by anything but animus toward the class it affect[ed]." *Id.* at 632. By contrast, the State marriage laws at issue here "codified a long-existing, widely held social norm already reflected in state law." Pet. App. 42a. As the court of appeals held, rejecting same-sex marriage did not by

itself "convey the kind of malice or unthinking prejudice the Constitution prohibits." *Id.*

3. Petitioners' *amici* contend that the doctrine of animus authorizes the Court to "set aside laws the very purpose of which is to discriminate against a group of citizens simply because of who they are." Brief for Human Rights Campaign as *Amici Curiae* Supporting Petitioners at 6 (citations omitted). This strained reading of precedent rests on the false premise that the fact of differential treatment is evidence of invidious intent. But "most legislation classifies for one purpose or another, with resulting disadvantage to various groups or persons." *Romer*, 517 U.S. at 631. The millennia-old marriage norm was not enacted to discriminate against gays and lesbians – or anyone – "because of who they are." The intent to maximize child welfare through an institution that ties children to their biological fathers and mothers is not animus. "Whether one agrees or disagrees with the goal of [securing traditional marriage], that goal in itself . . . does not remotely qualify for such harsh description, and for such derogatory association with racism." *Bray* v. *Alexandria Women's Health Clinic*, 506 U.S. 263, 274 (1993).

III. MANDATING SAME-SEX MARRIAGE ON OTHER GROUNDS WILL GENERATE CONFLICTS WITH RELIGIOUS LIBERTY.

A. Heightened Scrutiny and Rational Basis Review Would Undermine Religious Liberty.

Animus would be the most harmful way to justify a right to same-sex marriage because it would stigmatize traditional marriage supporters as ignorant and bigoted. But other doctrinal paths to same-sex marriage also would present serious conflicts with religious liberty.

1. Petitioners and the United States insist that State laws reaffirming the historic definition of marriage are subject to heightened scrutiny because they discriminate based on sexual orientation. *See* Br. Bourke Pets. at 32; *accord* Brief for United States as *Amicus Curiae* Supporting Petitioners at 15. Respondents have addressed in greater detail why sexual orientation does not qualify as a suspect class under this Court's established standards. Suffice it to say that Petitioners' plea for heightened scrutiny calls for the first new suspect class in 40 years – a seismic shift in equal protection jurisprudence.[15] It would elevate a new rule preferred by three circuits over the

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[15] *See* Kenji Yoshino, *The New Equal Protection*, 124 HARV. L. REV. 747, 756-57 (2011).

rational basis standard maintained over decades by nine others.[16]

Whether characterized as strict scrutiny, *Adarand Constructors, Inc.* v. *Peña*, 515 U.S. 200, 227 (1995), or intermediate scrutiny, *Miss. Univ. for Women* v. *Hogan*, 458 U.S. 718, 724 (1982), adopting suspect-class status for sexual orientation would ignite an array of conflicts with the freedoms of religious institutions and individual believers.

Most importantly, as with an animus finding, heightened scrutiny would place the moral authority of the Constitution behind the idea that any distinction based on sexual orientation is presumptively invidious. Our faith traditions, and those of millions more Americans, include beliefs about the meaning of sexuality and powerful injunctions against sexual conduct outside traditional marriage. Elevating sexual orientation to a suspect class would place the

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[16] *Compare Windsor* v. *United States*, 699 F.3d 169, 180-85 (2d Cir. 2012), *aff'd*, *Windsor*, 133 S. Ct. at 2675; *Baskin* v. *Bogan*, 766 F.3d 648, 657-59 (7th Cir. 2014); *and SmithKline Beecham Corp.* v. *Abbott Labs.*, 740 F.3d 471, 480-84 (9th Cir. 2014) *with Cook* v. *Gates*, 528 F.3d 42, 61 (1st Cir. 2008); *Thomasson* v. *Perry*, 80 F.3d 915, 928 (4th Cir. 1996); *Johnson* v. *Johnson*, 385 F.3d 503, 532 (5th Cir. 2004); *Davis* v. *Prison Health Servs.*, 679 F.3d 433, 438 (6th Cir. 2012); *Bruning*, 455 F.3d at 866-67; *Price-Cornelison* v. *Brooks*, 524 F.3d 1103, 1113 n.9 (10th Cir. 2008); *Lofton* v. *Sec'y of Dep't of Children & Family Servs.*, 358 F.3d 804, 818 (11th Cir. 2004); *Padula* v. *Webster*, 822 F.2d 97, 103-04 (D.C. Cir. 1987); *and Woodward* v. *United States*, 871 F.2d 1068, 1076 (Fed. Cir. 1989).

Constitution on a collision course with our beliefs. It would unleash powerful forces, including litigation, that would progressively equate religious distinctions based on sexual orientation with discrimination based on race. Religious beliefs in traditional sexual morality would in time be equated with racism: believers and religious institutions would be legally free to hold and express their beliefs (at least on their private properties and in public forums) but they would suffer the same opprobrium that we (rightly) heap on racist beliefs and speech. Social marginalization would inevitably follow. This suppression of beliefs would diminish the freedom of millions of Americans to live their faith openly and with dignity.

Those injuries to religious liberty are evident in this case. Laws reaffirming traditional marriage reflect longstanding beliefs, judgments, and ways of life, as we have explained. Placing those laws under the microscope of heightened scrutiny would render them – and the religious beliefs, judgments, and ways of life that have long animated them – constitutionally suspect. Demeaning our religious convictions about marriage in this manner would unfairly cast us "in the role of bigots or superstitious fools." *Windsor*, 133 S. Ct. at 2718 (Alito, J., dissenting).

Denigrating traditional beliefs about marriage would be only the first of such conflicts. Civil rights laws covering sexual orientation, which can adversely affect religious interests in numerous ways, might be construed to advance a compelling governmental interest if sexual orientation becomes a suspect class.

See Roberts v. *U.S. Jaycees*, 468 U.S. 609, 623 (1984). If such an interest were deemed compelling, religious institutions would be powerless to lean on the Free Exercise Clause as a basis for demanding reasonable accommodations. In rejecting strict scrutiny as the reigning standard for free exercise claims, *Employment Division* v. *Smith* held that "equality of treatment" ranks as a "constitutional norm[ ]," while free exercise exemptions from "generally applicable laws" are "a constitutional anomaly." 494 U.S. 872, 886 (1990). Bolstered by a further holding that sexual orientation is a suspect class, courts would be more inclined to construe the government's interest in preventing sexual orientation discrimination as sufficiently compelling to override the free exercise rights even of churches.[17]

Freedom of speech, *Hurley* v. *Irish-Am. Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557 (1995), and expressive association, *Boy Scouts of Am.* v. *Dale*, 530 U.S. 640 (2000), likewise would be threatened if the government has a compelling interest in protecting sexual orientation as a suspect class. Religious believers could find their speech, association, and free-exercise rights diminished or denied in

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[17] Designating sexual orientation as a suspect class also would tilt the Religious Freedom Restoration Act's compelling interest test away from religious accommodation and toward eliminating a new kind of invidious discrimination. *See Gonzales* v. *O Centro Espirita Beneficente Uniao Do Vegetal*, 546 U.S. 418, 436-37 (2006) (discussing governmental interests strong enough to defeat a RFRA claim).

a variety of contexts, such as public education, employment, public accommodations, and professional certification. Recognizing sexual orientation as a suspect class might enhance the equal treatment of gays and lesbians, but only by subtracting from the First Amendment liberties of religious institutions and believers.

Marriage, family, and sexuality have always been the subject of profound religious beliefs and practices. Those beliefs and practices are in turn reflected in innumerable religious, social, cultural, and educational institutions. Recognizing sexual orientation as a suspect class would practically create a constitutional mandate to suppress and marginalize traditional religious views on sexuality and those who hold them, generating legal, bureaucratic, and social conflicts with a wide and unpredictable range of religious interests and threatening the religious freedom of religious institutions and believers. Four decades of experience have taught that equality can be vindicated and legitimate concerns addressed without the addition of new suspect classes. Petitioners offer no convincing reason to discard that lesson now.

2. Nor should an animus ruling be cloaked as a finding of "irrationality" under rational basis review. Under that "paradigm of judicial restraint," *FCC v. Beach Comm'cns*, 508 U.S. 307, 314 (1993), the Court has sustained laws that advance the flimsiest of governmental interests by the most tenuous of

means.[18] Traditional marriage serves many legitimate governmental interests, as respondents and their *amici* have shown. Turning a blind eye to that evidence would distort the constitutional standard. It cannot be said that the only definition of marriage known to this country until a decade ago – one held sacred and profoundly important to tens of millions of religious Americans – is *irrational*. For faith communities, a ruling that the traditional definition of marriage fails rational basis review would signify judicial disrespect for their beliefs.

A right to same-sex marriage cannot avoid triggering and exacerbating conflicts with religious liberty. But the scale of the harm to religious institutions and believers depends to an extent on the legal ground the Court selects. Adverse decisions based on animus or heightened scrutiny would inflict the gravest injuries. A decision resting on rational basis review would do less damage initially, but equating traditional marriage with irrationality would still have corrosive effects on religious liberty. Any of these rationales for reversing the decision below would injure churches and religious believers.

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[18] Rational basis review has sustained laws distinguishing paperboard milk containers from nonreturnable plastic milk containers, *Minnesota* v. *Clover Leaf Creamery Co.*, 449 U.S. 456, 468 (1981); new from existing homeowners, *Nordlinger* v. *Hahn*, 505 U.S. 1, 13-14 (1992); and new from established street vendors, *New Orleans* v. *Dukes*, 427 U.S. 297, 305 (1976).

B. Mandating Same-Sex Marriage Under Any Theory Would Generate Conflicts with Religious Freedom.

1. While some theories may be more harmful to religious interests than others, reversal under any theory would pose serious risks for religious liberty. As a group of respected *amici* has noted, "a scholarly consensus has emerged that giving legal recognition to same-sex marriage may result in widespread and foreseeable church-state conflict." Brief for Gen. Conference Seventh-day Adventists and The Becket Fund for Religious Liberty as *Amici Curiae* Supporting Neither Party at 12. In addition to the nondiscrimination areas noted above, potential conflicts are expected to arise in the context of access to government facilities, *id.* at 21; government licensing for church-related adoption agencies and accreditation for religious colleges and their professional training programs, *id.* at 22-23; participation in government social services contracts, *id.* at 24-25; and the tax-exempt status of religious organizations, *id.* at 25.

Substantial church-state conflicts and invasions of religious liberty are certain because a right to same-sex marriage would contradict the religious texts of the major Abrahamic faiths. Christianity, Judaism, and Islam all have rich religious narratives extolling the husband-wife, child-centric meaning of marriage. Many Americans who accept these traditions understand marriage as a gift from God, intended to establish an optimal setting for bearing and rearing children rather than as a means of endorsing

adult relationship choices. These beliefs about marriage are not going away. Cherished by billions of believers worldwide and tens of millions in the U.S., these doctrines will not change based on federal court decisions, much less the shifting tides of public opinion. They are tied to theology, religious and family practices, and entire ways of life. They are no less essential to the dignity and identity of millions of Americans than petitioners' sexual orientation is to them.

Even advocates of same-sex marriage who have long been concerned about religious liberty concede that "[s]ignificant religious liberty issues will indeed follow in the wake of same-sex civil marriage." Brief of Douglas Laycock et al. as *Amici Curiae* Supporting Petitioners (Laycock Br.) at 11. They insist that "[w]e must protect religious liberty *and* the right to marry." *Id.* at 12. Their sensitivity to religious liberty is certainly welcome. But there is no way for the Court to adequately mitigate the harms that a right to same-sex marriage will admittedly inflict.

2. Beyond the other injuries we have described, a judicially-imposed right to same-sex marriage would halt any reasonable opportunity for religious organizations to bargain for religious-liberty accommodations to be included in State laws adopting same-sex marriage. *See* Robin Fretwell Wilson, *Marriage of Necessity: Same-Sex Marriage and Religious Liberty Protections*, 64 CASE W. RES. L. REV. 1161, 1173 (2014). Dicta affirming religious liberty principles certainly would be welcome, but it would not have

much practical effect as long as *Smith* remains the free exercise standard. To be sure, reconsideration of *Smith* and its abandonment of strict scrutiny for most free-exercise claims, *see* Laycock Br. at 35-37, would no doubt aid religious organizations and individuals – *if Smith* were ultimately rejected. But that possibility is too remote to offer real security against the religious liberty conflicts a right to same-sex marriage would create.

3. Petitioners' *amici* are wrong in asserting that "recognition of the right to marry will not exacerbate any actual or potential conflicts between religious objectors and the prohibitions against discrimination, which will continue to exist regardless of marriage rights." Am. United Br. at 6. Adopting same-sex marriage creates tensions and conflicts with religious liberty that nondiscrimination statutes alone do not raise. Take the troubling case of Barronelle Stutzman. She was sued by the State of Washington for refusing to provide flowers for a gay wedding. Her constitutional defenses, including federal claims of free speech and free exercise, were rejected precisely because Washington voters approved same-sex marriage. The trial court reasoned that passage of the voter initiative created "a direct and insoluble conflict between Stutzman's religiously motivated conduct and the laws of the State of Washington." *State* v. *Arlene's Flowers, Inc.*, No. 13-2-00871-5, at *58 (Feb. 18, 2015). Recognizing a federal right to same-sex marriage would spawn many similar conflicts, especially for conscientious objectors who own flower

shops, photography studios, wedding venues, and other businesses associated with weddings.

C. Creating a Right to Same-Sex Marriage Would Deny Religious Believers Equal Citizenship.

A right to same-sex marriage also would supplant the States' "historic and essential authority to define the marital relation" with an exertion of federal judicial power beyond the democratic process. *Windsor*, 133 S. Ct. at 2692. In so doing it would deprive citizens of the liberty to join with others in shaping "local policies 'more sensitive to the diverse needs of a heterogeneous society,'" *Bond* v. *United States*, 564 U.S. ___, 131 S. Ct. 2355, 2364 (2011) (Kennedy, J.) (quotations omitted). On the great issue of how to define marriage to secure its vital purposes, ordinary Americans no longer could "'seek a voice in shaping the destiny of their own times.'" *Schuette*, 134 S. Ct. at 1636 (quoting *Bond*, 131 S. Ct. at 2364). Lost would be their "fundamental right to speak and debate and learn and then, as a matter of political will, to act through a lawful electoral process." *Id.* at 1637.

Representative democracy matters to religious organizations and people of faith. Their capacity to build communities where their values are respected and their ways of life protected depends on the pluralism that our democratic institutions foster and secure. The fundamental liberty of religious believers to participate with other free citizens in deliberating

about and shaping the character of their common destiny has been protected by this Court's determination to read the Constitution as a charter for "people of fundamentally differing views." *Lochner* v. *New York*, 198 U.S. 45, 76 (1905) (Holmes, J., dissenting). Despite repeated pleas for judicial intervention, this Court has left nearly all major social controversies of the past century to be resolved by the people, consistent with their values as expressed and refined through State and local democratic institutions. *See, e.g.*, *Gregg* v. *Georgia*, 428 U.S. 153, 175-76 (1976) (opinion of Stewart, Powell, and Stevens, JJ.) (capital punishment); *Washington* v. *Glucksberg*, 521 U.S. 702, 735 (1997) (assisted suicide); *Miller* v. *California*, 413 U.S. 15, 33-34 (1973) (obscenity); *Maher* v. *Roe*, 434 U.S. 464, 479 (1977) (abortion funding); *cf.* U.S. CONST. amend. XXI, § 2 (authorizing States to regulate the transportation and importation of alcoholic beverages). Abortion is the exception. *See Planned Parenthood of S.E. Penn.* v. *Casey*, 505 U.S. 833, 846 (1992). And even on that divisive question the fundamental right is not absolute: "States may take sides in the abortion debate and come down on the side of life, even life in the unborn." *Stenberg* v. *Carhart*, 530 U.S. 914, 961 (2000) (Kennedy, J., dissenting). Erecting a categorical rule compelling the people of every State to accept same-sex marriage would contradict this long line of liberty-enhancing decisions.

The liberty to deliberate and act with other free citizens in defining the laws and institutions of one's

own State or community benefits people of diverse beliefs and values. A number of States have democratically embraced the arguments advanced here for same-sex marriage, and no doubt others will follow. In those States, the views of religious supporters of traditional marriage were respectfully heard but did not prevail in the democratic process. But in other States, religious views have had a more favorable reception, leading to the democratic decision not to redefine marriage. Mixed results at the polls are a natural outcome in a pluralistic democracy that respects the diverse opinions and values of all its citizens and resolves fundamental conflicts through debate, compromise, and democratic process. To declare an unprecedented constitutional right to same-sex marriage would deny people of faith who support traditional marriage the liberty to participate as equal citizens in deciding which values and policies will govern their communities.

We urge the Court to trust the people and their democratic institutions to resolve the marriage issue, as it has on other divisive issues so many times before.

CONCLUSION

For each of the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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APPENDIX – STATEMENTS OF INTEREST

The National Association of Evangelicals is the largest network of evangelical churches, denominations, colleges, and independent ministries in the United States. It serves 40 member denominations, representing 45,000 local churches, as well as numerous evangelical associations, organizations, universities, seminaries, and millions of Christians. The NAE believes that marriage is part of God's plan for humanity. As first described in the early chapters of Genesis and affirmed by Jesus in Matthew 19, marriage is a God-ordained, covenant relationship between a man and a woman through which the human race is propagated and by which stewardship of this earth is maintained.

The Church of Jesus Christ of Latter-day Saints is a Christian denomination with 15 million members worldwide. Marriage and the family are central to the Church and its members. The Church teaches that marriage between a man and a woman is ordained of God, that the traditional family is the foundation of society, and that marriage and family supply the crucial relationships through which parents and children acquire private and public virtue. Out of support for these fundamental beliefs, the Church appears in this case to defend the traditional, husband-wife definition of marriage.

The Ethics and Religious Liberty Commission (ERLC) is the moral concerns and public policy entity of the Southern Baptist Convention (SBC), the

nation's largest Protestant denomination, with over 46,000 churches and nearly 15.8 million members. The ERLC is charged by the SBC with addressing public policy affecting such issues as marriage and family, the sanctity of human life, ethics, and religious liberty. Marriage is a crucial social institution. As such, we seek to strengthen and protect it for the benefit of all.

The Lutheran Church – Missouri Synod is the second largest Lutheran denomination in North America, with approximately 6,200 member congregations and 2.3 million baptized members. The Synod believes that marriage is a sacred union of one man and one woman, *Genesis* 2:24-25, and that God gave marriage as a picture of the relationship between Christ and His bride the Church, *Ephesians* 5:32. As a Christian body in this country, the Synod believes it has the duty and responsibility to speak publicly in support of traditional marriage and to protect marriage as a divinely created relationship between one man and one woman.

The ***Assemblies of God*** was founded in 1914 and is headquartered in Springfield, Missouri. It has 3.1 million adherents in more than 12,800 churches in all 50 states and Puerto Rico, and 67.5 million adherents worldwide in more than 360,000 churches. The Assemblies of God believes that the Bible, which was given by inspiration of God, teaches that marriage was instituted by God and is between one man and one woman. Any Assemblies of God minister who

performs a so-called same-sex marriage has their ministerial credential revoked.

The ***Christian Legal Society*** ("CLS") is an association of Christian attorneys, law students, and law professors, with student chapters at approximately 110 law schools. CLS believes that a free society prospers only when the First Amendment rights of all Americans are protected, regardless of the current popularity of their beliefs and speech. For example, CLS was instrumental in passage of the Equal Access Act of 1984, which protects the right of all students, including both religious and LGBT students, to meet for "religious, political, philosophical or other" speech on public secondary school campuses. 20 U.S.C. 4071-74 (2013); *see* 128 Cong. Rec. 11784-85 (1982) (Sen. Hatfield statement).

CLS believes that these States' interest in defining marriage as extant only between one woman and one man survives any level of judicial scrutiny. But as a result of its own experience as a religious organization that has been excluded from the public square for expressing its Christian beliefs regarding marriage, CLS is deeply concerned about the ability of religious citizens to follow their religious consciences if the Court were to rely upon "animus" as a basis for finding that these States' laws lacked a rational basis or if the Court were to adopt a standard of "intermediate scrutiny" or "strict scrutiny" to review these laws. Unless this Court expressly preserves the religious freedoms of people of faith, the adoption of any of these standards would be a grave threat to

religious liberty and the ability of persons of faith to express their beliefs and associate with others who share their beliefs.

The Brethren Church was founded in 1883 and is headquartered in Ashland, Ohio. It has a constituency of more than 10,000 in 115 congregations in 18 States. The church believes that marriage is a covenant between one woman and one man, as set forth in the Scriptures and affirmed throughout.

The Christian and Missionary Alliance was founded in 1887 and is headquartered in Colorado Springs, Colorado. It has 500,000 attendees in approximately 2,000 churches. The Christian and Missionary Alliance believes that God intended marriage to be a monogamous, lifelong union between a man and a woman.

The ***Church of God, Cleveland, Tennessee***, was founded in 1886 and is headquartered in Cleveland, Tennessee. The Church of God has 1,150,487 members and 6,597 churches in the U.S. and Canada, and 5,893,675 members in 181 other countries worldwide. The Church of God affirms the definition of marriage, based on the Holy Bible, as being between one man and one woman.

Converge Worldwide, also known as the Baptist General Conference, was founded in 1852 and is headquartered in Orlando, Florida. There are 1,200 churches with more than 300,000 constituents in 43 states. Converge Worldwide believes that Christian marriage is a spiritual and physical union into which

one man and one woman may enter for the glory of God and the propagation of the race.

The ***Evangelical Congregational Church*** was founded in 1922 and is headquartered in Myerstown, Pennsylvania. It has 123 churches in 6 states. The Evangelical Congregational Church believes the Bible conceives of marriage as a lifelong, monogamous commitment between a man and a woman and that the institution of marriage, ordained of God (Genesis 2:24), has been reaffirmed by Jesus (Matthew 19:5) and Paul (Ephesians 5:31).

The ***Evangelical Presbyterian Church*** was founded in 1981 and is headquartered in Livonia, Michigan. It has 560 churches throughout the U.S. with 150,000 members. The EPC Position Paper on Marriage affirms the clear testimony of God's Word that marriage is between one man and one woman.

The Fellowship of Evangelical Churches was founded in 1865 and is headquartered in Fort Wayne, Indiana. It has approximately 16,000 congregants in 11 states. The Fellowship of Evangelical Churches believes marriage is a sacred institution ordained of God as a permanent and totally intimate relationship between one man and one woman.

The ***Free Methodist Church – USA*** was founded in 1860 and is headquartered in Indianapolis, Indiana. It has churches in all 50 states, and has one million members worldwide. The Free Methodist Church – USA believes that sexual intimacy is a gift from God for marital union, and that the sanctity of marriage

between one man and one woman is to be protected against all manner of immoral conduct.

Grace Communion International was founded in 1934 and is headquartered in Glendora, California. It has over 50,000 members formed into 900 churches spread across 100 countries. Grace Communion International believes God loves all his children, establishing marriage as an exclusive sacred union between one man and one woman that honors God's covenant relationship.

The ***International Pentecostal Holiness Church*** was founded in 1898 and is headquartered in Oklahoma City, Oklahoma. It has 2,100 congregations with 275,000 members in 48 states, and 1.8 million members worldwide in more than 100 countries. The IPHC believes that marriage was established by God and only truly exists between a man and a woman and as such is in the best interest of any society. Our ministers and facilities can only be used for such marriages and associated celebrations.

The Missionary Church was founded in 1969 and is headquartered in Fort Wayne, Indiana. It has a current worship attendance of approximately 69,000 in the United States. The Missionary Church is committed to the truth that God created marriage to be the union between one man (born male) and one woman (born female) as both the basic unit of society and the symbolic representation of the relationship between Jesus Christ and His bride, the Church.

Open Bible Churches was founded in 1935 and is headquartered in Des Moines, Iowa. It has a membership of 30,000 constituents. Open Bible Churches believes that it was God who created human beings, distinctively crafted as male and female, and who defined and provided marriage as a relational gift exclusively for one man/one woman application.

The Wesleyan Church was founded in 1843 and is headquartered in Indianapolis, Indiana. There are 139,426 members and 1,550 churches in 49 states, and 422,000 members and 5,800 churches globally. The Wesleyan Church believes that God's plan for human sexuality is that it is to be expressed only in a monogamous lifelong relationship between one man and one woman within the framework of marriage.